

N.D.A.G. Letter to Stefonowicz (May 17, 1989)

May 17, 1989

Mr. Michel W. Stefonowicz
Divide County State's Attorney
P.O. Box 289
Crosby, ND 58730-0289

Dear Mr. Stefonowicz:

Thank you for your March 28, 1989, letter inquiring whether N.D.C.C. § 57-23-04(1)(h) authorizes a board of county commissioners to abate property taxes on a pro rata basis if a building which was in existence on the assessment date is subsequently voluntarily removed during the assessment year.

My office has learned that the Divide County Board of Commissioners received a letter dated February 23, 1989, from Mr. Barry Hasti, state supervisor of assessments for the office of the North Dakota Tax Commissioner, responding to this same question. In his letter, Mr. Hasti stated that "[a]bsent statutory authority to remove a proper assessment, neither the board of county commissioners nor the assessor is empowered to make such a reduction."

I have reviewed Mr. Hasti's letter, and I believe his conclusion is legally correct.

North Dakota counties are creatures of the constitution and may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 329 (N.D. 1985).

N.D.C.C. § 57-02-11(1) provides that "[a]ll real property subject to taxation shall be listed and assessed every year with reference to its value, on February first of that year."

North Dakota has historically followed a general rule of ad valorem property taxation that, unless otherwise specifically directed by the Legislature, the statutory assessment date fixes the "point of time for determining the taxability, ownership, and value of both real and personal property for the purpose of taxation." Gaar, Scott & Co. v. Sorum, 90 N.W. 799, 801 (N.D. 1902).

The Legislature has enacted an exception to this general rule when improvements have been damaged by fire, flood or tornado.

Under N.D.C.C. § 57-02-11(2), an assessor may reduce an assessment as follows:

2. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or injured by fire, flood, or tornado, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made. No deduction shall be made on account of damages covered by insurance or damages amounting to less than one hundred dollars.

Under N.D.C.C. § 57-23-04(1)(g), a board of county commissioners may abate an assessment on a pro rata basis as follows

- g. When any building, mobile home, structure, or other improvement has been destroyed or injured by fire, flood, or tornado the abatement or refund shall be granted only for that part of the year remaining after the property was damaged or destroyed.

The Legislature has enacted no statute that authorizes a board of county commissioners to abate property taxes on a pro rata basis when a building which was in existence on the assessment date is subsequently voluntarily removed during the assessment year. Likewise, the Legislature has enacted no statute that authorizes a board of county commissioners or an assessor to assess property taxes on a pro rata basis when a building which was not in existence on the assessment date is subsequently constructed during the assessment year.

Therefore, while N.D.C.C. § 57-23-04(1)(h) authorizes a board of county commissioners to abate an assessment "[w]hen the assessment on the complainant's property is invalid, inequitable, or unjust," those conditions must have existed on the assessment date, unless a statutory exception has been enacted.

I hope this information is helpful.

Sincerely,

Nicholas J. Spaeth

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